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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,916	06/21/2001	Shigehiro Kondo	42826.00008	7451

30256 7590 08/01/2003

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/887,916	Applicant(s) KONDO, SHIGEHIRO	
	Examiner S. Weinstein	Art Unit 1761	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondenc address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krubicza (EP 878,536) in view of applicant's admission of the prior art, Spack (GB 925,305) and Matsuki (JP 11-169160), further in view of Kanai (JP 5-76340), Mikami et al (JP 4-62365) and Richter (DE 352160) for the reasons given in the Office action mailed 2/26/03, Paper No. 4.

All of the applicant's remarks filed May 16, 2003, Paper No. 5 have been fully and carefully considered but are not found to be convincing. As noted previously, the art, taken as a whole, fairly teaches or suggests to one of ordinary skill in the art that it would have been obvious to place into a beverage bottle, a plant material that is associated with the ingredients of the beverage. The art taken as a whole teaches the plant material can be added for display or decorative purposes. Thus, Krubicza has a beverage that includes hemp syrup and adds hemp leaves to the beverage. Note, too, Spack provides a kirsch liqueur (which is cherry flavored) and adds a branch of cherries to the cherry flavored liqueur. It is urged on page 2 of the response that unlike the art taken as a whole, the claims recite that the added plant material is of the type from which the alcoholic portion of the beverage is fermented as opposed to an additive ingredient. Once it is known to provide a plant material to a bottle that relates to an ingredient of the beverage, the particular ingredient one chooses to reflect in the added plant material is seen to have been an obvious matter of choice. That is, an ingredient is an ingredient. The rice is an

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ingredient just as is the hemp syrup or the cherry flavor. It is urged that sake and other wines generally do not include additives and do not have their taste altered. This urging is not convincing. The sake or wine like the other alcoholic beverages are beverages and the art taken as a whole teaches one of ordinary skill in the art to add to the bottled beverage a plant material that relates to an ingredient of the beverage. That is, the art taken as a whole is seen to be a generic teaching applicable to any beverage. On pages 2 and 3 of the response, applicant addresses each reference as if they were applied separately under 35 USC 102. The references are applied together under 35 USC 103, obviousness, as clearly detailed in the last Office action. Patentability is predicated on what the art taken as a whole teaches. Thus, and for example, Spack discloses an alcoholic beverage containing cherry flavor as an ingredient and wherein the bottle is provided with cherries plant material. Liqueurs can be made in several different ways but this is irrelevant since the art taken as a whole teaches added, plant material reflecting an ingredient in a bottled beverage.

Finally, in regard to the remarks concerning claim 2, the examiner made no indication that claim 2 was allowable and one should not assume a claim is allowable unless it is specifically stated in the action. The reasons for rejecting claim 2 was encompassed in the statement that the art taken as a whole would fairly suggest selecting another conventional beverage and its related plant material.

Acknowledgement is made of a claim for priority. However, no certified copies or copies of the certified copies have been received.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

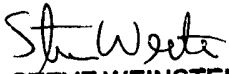
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh  
July 28, 2003

  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761  
7/31/03

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krubicza (EP 878,536) in view of applicant's admission of the prior art, Spack (GB 925,305) and Matsuki (JP 11-169160), further in view of Kanai (JP 5-76840), Mikami et al (JP 4-62365) and Richter (DE 352160) for the reasons given in the Office action mailed 2/26/03, Paper No. 4.

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ingredient of the beverage, the particular ingredient one chooses to reflect in the added plant material is seen to have been an ingredient. The rice is an ingredient just as is the hemp syrup or the cherry flavor. It is urged that sake and other wines are generally do not include additives and do not have their taste altered. This urging is not convincing. The sake or wine like the other alcoholic beverages are beverages and the art taken as a whole teaches one of ordinary skill in the art to add to the bottled beverage a plant material that relates to an ingredient of the beverage. That is, the art taken as a whole is seen to be a generic teaching applicable to any beverage. On pages 2 and 3 of the response, applicant addresses each reference as if they were applied separately under 35 USC 102. The references are applied together under 35 USC 103, obviousness as clearly detailed in the last Office action. Patentability is predicated on what the art taken as a whole teaches. Thus, and for example, Spack discloses an alcoholic beverage containing cherry flavor as an ingredient and wherein the bottle is provided with cherries plant material. Lacquerers can be made in several different ways but this is irrelevant since the art taken as a whole teaches added, plant material reflecting an ingredient in a bottled beverage.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

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